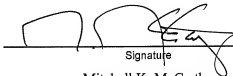


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) STL11875							
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Application Number 10/817,565</td> <td style="width: 50%; padding: 5px;">Filed April 2, 2004</td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor David Peter DeCenzo</td> </tr> <tr> <td style="padding: 5px;">Art Unit 2114</td> <td style="padding: 5px;">Examiner Gabriel L. Chu</td> </tr> </table>		Application Number 10/817,565	Filed April 2, 2004	First Named Inventor David Peter DeCenzo		Art Unit 2114	Examiner Gabriel L. Chu
Application Number 10/817,565	Filed April 2, 2004								
First Named Inventor David Peter DeCenzo									
Art Unit 2114	Examiner Gabriel L. Chu								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>38,794</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ </div> <div style="width: 45%; text-align: center;">  _____ Signature Mitchell K. McCarthy _____ Typed or printed name (405) 601-2798 _____ Telephone number _____ Date </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>									
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.									

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Filed Electronically on October 29, 2007

PATENT
Dkt. STL11875

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **David Peter DeCenzo, William A. Pagano and Stephen J. Sicola**
Assignee: **SEAGATE TECHNOLOGY LLC**
Application No.: **10/817,565**
Filed: **April 2, 2004**
For: **MULTIPATH REDUNDANT STORAGE SYSTEM ARCHITECTURE AND METHOD**

Group No.: **2114**

Examiner: **Gabriel Chu**

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Alexandria, VA 22313-1450

APPLICANT'S REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Following these introductory remarks is a listing of unresolved issues making this case not in condition for appeal. Although Applicant has raised these issues previously during prosecution, the Office has not responsively addressed them in a manner that defines any bona fide matter for appeal. In fact, the written record from the Office is replete with riddles that elude comprehension, for example culminating in the Advisory Action that states in pertinent part:

Attorney persists in arguing the terminology the specification itself lays out. Examiner advises against Attorney arguing against Applicant's own specification.
(Advisory Action of 10/16/2007)

Applicant is unable to discern what this statement means, although apparently its arguments are perceived by the Office to be misplaced. Applicant is entitled to an explanation of this position as well as many others in the record too many to enumerate within the prescribed page limitations of this Request. To that end, Applicant has submitted written requests for a telephone interview on three different occasions,¹ in accordance with the Office's published practices for efficiently facilitating substantive

¹ Applicant's Responses of 1/16/2007, 4/5/2007, and 8/28/2007.

matters in a case that has been granted special status. Unfortunately, none of those requests were granted.

Applicant prays that the Panel, after reviewing the facts of this case, will reopen the merits in order to address the following unresolved issues before burdening Applicant with the delay and expense of an appeal.

1. In the Section 102 rejection of claim 30 over Rauscher '201 there is an unresolved factual issue that the Office has not substantiated evidence as to how it is reasonable to read the *common enclosure* term onto the separately enclosed controller and data storage devices of Rauscher '201.²

Applicant has shown that Rauscher '201 encloses the controllers 175, 275 individually in chassis 100, 200, respectively, separate from each other and separate from the data storage devices (DASD) which are enclosed in chassis 300, 400, 500.³ Rauscher '201 encloses the controllers separate from the data storage devices for the purpose of providing a modular arrangement, in direct contravention to the claimed subject matter.⁴ The rack 700 in Rauscher '201 is no more than horizontal shelves 710, 720, 730, 740, 750, 760 supported by vertical ends 705, 715. There simply is no evidence in the record substantiating the Office's position that placing separate enclosures 100, 200, 300, 400, 500, 600 on the open shelves of the rack 700 somehow puts them in a "common enclosure." The Office's position not only fails to make common sense to the skilled artisan, it is in fact in direct contravention to Rauscher's purpose of separately enclosing the controllers from each other and from the data storage devices.

2. In the Section 102 rejection of claims 30, 38, 55, 56, and 58 over Rauscher '201 there is an unresolved factual issue that the Office has not substantiated evidence as to how it is reasonable to read the *switchable fabric* term onto the point-to-point communications of Rauscher '201.

² Claim 30 recites: a plurality of data storage devices and redundant storage controllers within a common enclosure....

³ Applicant's Response of 8/28/2007 ppg. 10-12; Applicant's Response of 1/16/2007 ppg. 15-16 citing Rauscher '201 paras. [0052-0056].

⁴ Applicant's Response of 8/28/2007 ppg. 10-12; Applicant's Response of 1/16/2007 pg. 16 citing Rauscher '201 paras.[0004], [0025], and [0070].

Applicant has shown that Rauscher '201 discloses using merely connectors 110, 120, 130 between the controller 175 and each of the DASDs 310-380, 410-480, 510-580, respectively, and connectors 210, 220, 230 between the controller 275 and the same DASDs, respectively.⁵ Rauscher '201 explicitly discloses these connectors 110, 120, 130, 210, 220, 230 as providing point-to-point communications.⁶

As understood, the Office's position is that because of the use of permissive language "may" in the specification, and because point-to-point connectors can somehow inexplicably be a "configurable connection," then the point-to-point connections of Rauscher '201 can reasonably be said to anticipate the *switchable fabric* of these claims.⁷ Applicant's position in the record is that this is reversible error.⁸

Applicant has argued in the record that the term *switchable fabric* connotes plain meaning to the skilled artisan.⁹ The skilled artisan clearly understands that the connectors 110, 120, 130, 210, 220, 230 in Rauscher '201 are a point-to-point configuration and not a switched configuration¹⁰ as recited by the *switchable fabric* feature of these claims.

3. In the Section 102 rejection of claims 38, 47, 55, 56, 58, and 59 over Steinmetz '260 there is an unresolved factual issue that the Office has not substantiated evidence as to how it is reasonable to read the *switchable fabric* term onto the fibre channel arbitrated loop ("FC-AL") between the controller 1006 and the shelf routers 1014, 1018, and the point-to-point serial links between the shelf routers 1014, 1018 and the disk drives 1022-1025 of Steinmetz '260. Applicant has pointed out in the record that the skilled artisan clearly understands that FC-AL is an alternative to using a switched fabric and is not a

⁵ Applicant's Response of 4/5/2007 pg. 12 lines 1-4; Applicant's Response of 1/16/2007 ppg. 17-21.

⁶ Rauscher '210 para. [0042], claims 17 and 18; Applicant's Response of 8/28/2007 ppg. 12-15; Applicant's Response of 4/5/2007 pg. 12 lines 1-4; Microsoft Computer Dictionary, 4th Ed. (emphasis added): point-to-point configuration *n.* A communications link in which dedicated links exist between individual origins and destinations, as opposed to a point-to-multipoint configuration, in which the same signal goes to many destinations (such as a cable TV system), or a switched configuration, in which the signal moves from the origin to a switch that routes the signal to one of several possible destinations. Also called point-to-point connection.

⁷ Office Action of 6/28/2007 ppg. 4-5 para. 17.

⁸ Applicant's Response of 8/28/2007 pg. 14 line 3.

⁹ Applicant's Response of 4/5/2007 pg. 12 lines 11-13; Applicant's Response of 1/16/2007 pg. 18 lines 8-11, pg. 19 lines 3-5.

¹⁰ Microsoft Computer Dictionary, 4th Ed. (emphasis added): switched configuration *n.* A communications link in which a signal moves from the origin to a switch that routes the signal to one of several possible destinations. Compare point-to-point configuration.

switched fabric itself, and that the serial point-to-point communications do not involve the use of a switched fabric, for the reasons set forth above in the discussions of Rauscher '201.

4. In the Section 102 rejection of claim 54 over DeKoning '942 there is an unresolved factual issue that the Office has not substantiated evidence as to how it is reasonable to read *at least two independent signal paths between each location and each controller* onto the disclosure of DeKoning '942.

Applicant has shown in the record that DeKoning '942 discloses only one signal path between each of the controllers 116, 118 and each storage location.¹¹ Contrary to the claimed subject matter, there is no second independent signal path between each storage location and each controller 116. Rather, DeKoning '942 discloses two signal paths from a storage location to two different controllers.

5. In the Section 103 rejection of claim 57 over Steinmetz '260 and Pignolet '828 there is an unresolved factual issue that the Office has not substantiated evidence as to how it is reasonable to read the cited references as including *dual ported storage controllers with a first port connected to a first switchable fabric and a second port connected to a second switchable fabric, the fabrics, in turn, connected to a plurality of data storage devices* as claimed. As discussed above, Steinmetz '260 discloses a FC-AL topology connecting the controller to the shelf routers, and discrete point-to-point serial links between the shelf routers and the data storage devices. Neither the FC-AL nor the point-to-point links discloses nor necessarily requires *switchable fabric* as in the present embodiments as claimed. Pignolet '828 is wholly silent regarding the use of a *switchable fabric* as claimed and does not cure the deficiency of Steinmetz 260.

Before a closing of the merits, Applicant is entitled to an evidentiary showing that the cited references disclose all the recited features of the Section 102 rejected claims and that they include all the recited features of the Section 103 rejected claims. To send this case to appeal the Pre-Brief Panel must find in the underlying facts "substantial evidence"

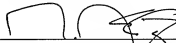
¹¹ See Applicant's Response of 8/28/2008, marked up FIG. from DeKoning '942 on pg. 18.

that adequately supports the Office's legal conclusions of anticipation and obviousness. This approach is consonant with the Office's obligation to develop an evidentiary basis for its factual findings to allow for judicial review under the substantial evidence standard that is both deferential and meaningful.¹²

Given the facts of this case, Applicant believes the Panel should decide that the Office has not substantiated a *prima facie* case of anticipation or obviousness for any of the independent claims, and that the factual issues raised above must be resolved before this case is in condition for appeal. Applicant prays the Panel will agree that Applicant should not be burdened with the delay and expense of appeal until this case is actually in condition for appeal, and that the Panel will reopen the merits in remediation of the present state of this case.

Respectfully submitted,

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¹² see *In re Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002).